



Attorney's Docket No. S01400/70001 DPM

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant or Patentee: Winneg et al.  
Serial or Patent No.: 09/826,310  
Filed or Issued: April 3, 2001  
For: SECURELY EXECUTING AN APPLICATION ON A  
COMPUTER SYSTEM  
Examiner: Unassigned  
Art Unit: 2131

**CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)**

The undersigned hereby certifies that this document is being placed in the United States mail with first-class postage attached, addressed to Box DAC, the Commissioner for Patents, Washington, D.C. 20231 on the 22nd day of October, 2001.



Signature

BOX DAC  
Commissioner for Patents  
Washington, D.C. 20231

Sir:

**STATEMENT OF FACTS OF DOUGLAS M. WINNEG**

1. I, the undersigned Douglas M. Winneg, joint inventor for the above-identified application and President of Software Secure, Inc. (SSI), do make this statement of my own free will, and on the basis of personal knowledge or belief.
2. Raymond Hayland of Charleston, South Carolina, now having a postal address of c/o Software Works Corporation (Software Works), 1001 Worcester Road Framingham, MA 01703, is believed to be a joint inventor in U.S. Patent Application Serial No. 09/826,310 (the '310 application), filed April 3, 2001.
3. Raymond Hayland has now refused to sign an inventor's Declaration as required under 37 C.F.R. §1.63, as described in the facts set forth below.

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4. Raymond Hayland is a principal at the software development firm, Software Works. SSI engaged Software Works in December 1998, to help design a software application. Mr. Hayland was the senior technical engineer for Software Works assigned to this design project.

5. On December 7, 1998, Software Works executed an agreement (Agreement I), Exhibit A attached hereto, with SSI to perform services for SSI as an independent contractor. Agreement I, among other things: assigned to SSI all intellectual property rights of all work performed by Software Works for SSI under the terms of the agreement; prohibited the disclosure of information by Software Works employees of information that was confidential to SSI; and prohibited Software Works employees from competing against SSI.

6. Between December 1998 and November 1999, while he was an employee of Software Works, it is believed that Raymond Hayland, working with myself and others at SSI, conceived or co-conceived an invention recited in at least one claim of the '310 application.

7. In November 1999, Raymond Hayland became an employee of SSI and executed a non-disclosure and non-competition agreement (Agreement II) with SSI, Exhibit B attached hereto. Under Agreement II, Mr. Hayland assigned to SSI the intellectual property rights in all work he performed while in the employ of SSI.

8. On February 25, 2000, Raymond Hayland resigned from SSI.

9. Since that date, SSI and Raymond Hayland have been having discussions relating to his resignation. Mr. Hayland claims that SSI owes him compensation for work he performed during the period of time between his resignation and the end of the relationship between SSI and Software Works.

10. During these discussions, Mr. Hayland has claimed that he is not obligated to refrain from competing with SSI under either Agreement I or Agreement II. He claims that he was advised of such by his legal representatives. During these discussions, Mr. Hayland also has indicated that as a principal of Software Works he was then currently performing work for another company developing similar technology to that designed by SSI.

11. On April 3, 2001, the '310 application was filed. The '310 application includes proprietary information of SSI beyond that known to Raymond Hayland on February 25, 2000, the date Mr. Hayland resigned from SSI.

12. Due to the facts set forth above, particularly in paragraphs 10 and 11, SSI has been loath to send to Raymond Hayland a copy of the '310 application because it is feared that should Mr. Hayland receive a copy of the '310 application he would be inclined to provide copies of the '310 application to competitors of SSI. A competitor receiving such a copy could cause irreparable damage to SSI's intellectual property, particularly if the '310 application does not mature into a patent. For these reasons, I decided that rather than send him a copy of the '310 application, I would have Raymond Hayland to review a copy of the '310 application and sign the inventor's Declaration in the office of SSI's patent counsel, Wolf, Greenfield & Sacks, P.C. (Patent Counsel).

13. By letter dated August 11, 2001 and delivered as Certified Mail, Exhibit C attached hereto, I gave notice to Mr. Hayland of SSI's annual shareholder meeting to take place on September 18, 2001 at the office of Patent Counsel.

14. By letter dated August 24 2001 and delivered as Certified Mail, Exhibit D attached hereto, I informed Raymond Hayland that because the meeting was inadvertently scheduled to take place during the Jewish celebration of the New Year, it was rescheduled to take place on September 25, 2001.

15. In the August 24, 2001 letter, I invited Raymond Hayland to meet with me at the office of Patent Counsel on either September 17 or September 19 in order to review the '310 application.

16. By letter dated September 14, 2001 and delivered as Regular Mail, Exhibit C attached hereto, Raymond Hayland reiterated that he believed that he was not obligated to refrain from competing with SSI and that he would not meet with me at Patent Counsel's office. In the September 14 letter, Mr. Hayland stated that he would not "perform any further services on behalf of Software Secure Inc., nor shall Software Secure Inc. affix my signature to any document. . ."

17. The September 14, 2001 letter also stated that Raymond Hayland would be unavailable to attend the SSI Annual Meeting on September 25, but that "my agent will be attending in my stead, he will contact you beforehand."

18. On September 17, 2001 I telephoned Raymond Hayland on his mobile phone. He did not answer the call. I left him a message stating that he was designated an inventor for some of the claims of the '310 application, and that accordingly, it was necessary that he review the '310 application and affix his signature thereto. I stated that I would do whatever was necessary to facilitate his review of the '310 application, and that we needed to file the Inventor's declaration by September 20, 2001. Mr. Hayland never responded to this message.

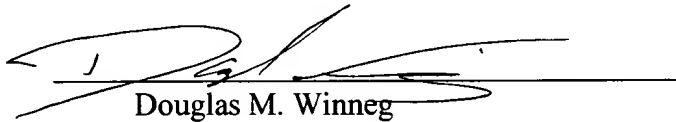
19. Raymond Hayland unexpectedly attended the SSI annual meeting on September 25, 2001, which also was attended by SSI senior management, its Board of Directors, and some shareholders. During the meeting, a shareholder asked about the status of the '310 application. In the presence of Mr. Hayland, I explained the following: the application was prepared and we were waiting to file the inventor's Declaration; as a designated inventor, Mr. Hayland was required by statute to review the application and sign the inventor's Declaration; and to date, Mr.

Hayland had refused to review the patent application.

20. During the SSI annual meeting on September 25, 2001, in response to my statements described in paragraph 19 above, Mr. Hayland said that he would not review the patent application or sign any declaration until he and SSI resolved his dispute.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Date: October 22, 2001



Douglas M. Winneg

This AGREEMENT is entered into this 7 day of December, 1998, by and between Software Secure, Inc., a Delaware corporation with an office at 345 Commonwealth Avenue, Boston, MA 02115 (the "Company") and Software Works Corporation, with offices at 1001 Worcester Road, Framingham, MA 01710 ("TSW").

### BACKGROUND

The Company requires the services of TSW with respect to the tasks specified herein, and TSW has expertise in the area of services required by the Company and is willing to provide such services.

In consideration of the mutual promises more particularly set forth below, the above parties have entered into this Agreement as follows:

### TERMS AND CONDITIONS

- 1) **STATEMENT OF WORK:** TSW agrees to provide Company with project management services specified in Schedule A of this Agreement, including to: select the technical platform, develop the product description document, develop the functional and technical design documents and help select a programming vendor. Schedule A may be amended from time to time by the parties in accordance with the terms set forth herein. TSW will furnish the Company with written work plans and progress reports, as requested by the Company, in such form as is customary in the trade, and shall make such final reports as the Company may require.
- 2) **DUE DATES AND ACCEPTANCE:** TSW agrees that the Due Dates specified in Schedule A of this Agreement are critical to the Company and delays, other than those caused by changes in specification by the Company, are not acceptable. The Company, however, may from time to time at its management's discretion choose to accept a Deliverable after the Due Date. Such acceptance shall not constitute an extension of other Due Dates or waiver of other provisions of this Agreement. Unless TSW receives from the Company a written notice within five business days after a Deliverable has been released to the Company, that the Deliverable from TSW was not reasonably satisfactory under this Agreement in terms of the Due Date for that particular Deliverable, the Deliverable shall be deemed acceptable to the Company for purpose of payment. Acceptance by the Company of a Deliverable does not waive the Company's rights or TSW's obligations as stated under WARRANTIES and other provisions of this Agreement.
- 3) **PRICES AND PAYMENTS:** (a) In consideration of the services performed by TSW, Company agrees to pay TSW invoices tendered to the Company following completion of each Deliverable as stated in Schedule A, as such may be amended from time to time by the parties in accordance with the terms set forth herein. The Company shall tender payment for the Deliverable within 10 business days of receipt of the Invoice provided, however, that the Company shall not be required to make such payment within

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the first ten (10) business days of its receipt of each such Deliverable from TSW. Payment by the Company for a Deliverable does not waive the Company's rights or TSW's obligations under WARRANTIES and other provisions of this Agreement.

(b) Upon completion and delivery of each Deliverable as stated in Schedule A, TSW shall forward an invoice for payment to TSW. Each invoice shall include the following: (1) description of all work performed by TSW in completing the Deliverable; (2) number of hours spent by TSW in performing the necessary work in completing the Deliverable; and, (3) the billing rate of each TSW employee who performed the work. TSW agrees that during the term of this Agreement, project management and executive services will be invoiced at a \$125.00 hourly rate, and programming services will be invoiced at a \$90.00 hourly rate.

(c) No other amounts shall be payable by the Company to TSW. TSW shall be responsible for the maintenance of complete records on all time and charges submitted for billing in accordance with Exhibit A. Such records shall be made available to the Company's representatives upon its request.

4. **WARRANTIES:** (a) TSW warrants that the services performed hereunder will be performed in a manner in accord with any statutes, regulations, ordinances or contracts applicable to the services covered hereunder, and will be performed in a manner in accord with ordinary business custom and usage.

(b) TSW warrants that in the performance of its duties under this agreements it will not knowingly infringe on any existing copyright, patent, or other proprietary software. The parties acknowledge however that independently created software might bear similarities, and TSW makes no warranty relative to such similarities.

(c) TSW warrants that no Deliverable shall knowingly contain any material owned by any third party, except as disclosed to the Company in writing prior to TSW's incorporating such material into any Deliverable.

(d) TSW warrants that to the extent that it is aware that computer software delivered hereunder, and the media on which any copy is so delivered, contains any code which will destroy or alter data or program code or interfere with the operation of the computer on which the software is used, or any other computer with which such computer exchanges data or storage media, actions shall be described in written documentation furnished with the Deliverables so as to be under the knowing control of the user of the software.

5. **ASSIGNMENT AND SUBCONTRACTING:** This Agreement may not be assigned or transferred by TSW to any other party, nor may any work be subcontracted, without the prior written consent of the Company.

6. **TSW's RESPONSIBILITY FOR PERSONNEL:** (a) All personnel supplied or used by TSW shall be deemed employees or subcontractors of TSW and will not be

considered employees, agents or subcontractors of the Company for any purpose whatsoever. TSW assumes full responsibility for the actions of all such personnel while performing services under this Agreement and for the payment of their compensation (including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes), workers' compensation, disability benefits and the like to the extent applicable to the personnel involved. Company shall not be liable to any subcontractor for compensation, costs or any other consideration.

(b) In the event TSW uses subcontractors to perform any of the services covered by this Agreement, TSW shall take full responsibility for such subcontractors and manage the entire effort to ensure that the quality and timeliness of Deliverables are acceptable to the Company. This shall include, but not be limited to, interpretation and explanation of specifications and functional requirements to the subcontractors, execution of acceptance tests, validation of technical quality, and other procedures required to ensure that the Deliverables meet the Company's specifications, performance standards and Due Dates.

(c) Notwithstanding and without in any way limiting any terms and conditions set forth in this Agreement, all subcontractors of TSW shall be deemed to have made all of the representations and warranties of TSW set forth herein and shall be subject to any obligations of TSW hereunder, and, if requested by the Company, TSW shall obtain from each subcontractor its written consent to and acknowledgment of the terms of this Agreement.

7. INDEMNIFICATION: (a) TSW agrees to indemnify and save the Company harmless from any liabilities, claims or demands (including the costs, expenses, and attorneys' fees on account thereof) that may be made: First, by anyone for injuries to persons or damage to property, including theft, resulting from TSW's acts or omissions or those of persons furnished by TSW; or second, by persons furnished by TSW or by any subcontractors used by TSW for injuries or damages claimed under workers' compensation or similar acts. TSW shall defend the Company against any such liability, claim or demand should the Company so request. The Company agrees to notify TSW, in writing within seven (7) days, of any written claims or demands made against the Company for which TSW is liable hereunder.

(b) To the extent that the Company is found liable in any action brought against the Company that is based on any infringement, or claim of infringement, of any patent, copyright, or other proprietary right of any third party, arising from the Company's use, or sale of any materials, programs or services furnished by TSW or its subcontractors to the Company hereunder, for which TSW was aware of the rights of the third party and failed to notify the Company thereof, TSW will fully indemnify and save the Company harmless from any such liability resulting from any action brought within one year following the expiration, termination or cancellation of this Agreement. The Company shall notify TSW promptly of any claim of infringement for which TSW may be responsible.



8. **RIGHTS IN WORK PRODUCT:** All computer software programs and documentation, algorithms, program code, any inventions and ideas, written material or other property, tangible or intangible, arising out of or resulting from the performance of this Agreement, whether developed by TSW, TSW's employees, subcontractors or otherwise, and all proprietary rights thereto, including copyright rights therein, (the "Work Product") shall belong to the Company immediately upon development subject, however, to the Company's acceptance of such items. As to copyrights, TSW agrees that all Deliverables shall be deemed a "work made for hire" and that the Company shall be deemed the author thereof for copyright purposes; provided, however, that if any Deliverable is at any time determined to not be a work made for hire, this Agreement shall be deemed an irrevocable assignment of the copyright to the entire Work Product. TSW shall at the request of the Company execute all documents as are required to vest such ownership in the Company. TSW will acquire from its employees and any permitted subcontractors who may be engaged in the performance of services under this Agreement all such rights as may be necessary so that the Company will receive the rights hereby agreed to be conveyed and vested in it, free of any claims of such employees or subcontractors. TSW shall treat all Work Product as Confidential Information of the Company, and shall impose the requirements of this Paragraph on any permitted subcontractor.

9. **CONFIDENTIAL INFORMATION:** Any specifications, drawings, sketches, models, samples, data, computer programs or documentation, algorithms, program code or other technical or business information, (hereinafter referred to as "Confidential Information") furnished or disclosed to TSW hereunder shall be deemed the property of and, when in tangible form, shall be returned to the Company. Unless such Confidential Information was previously known to TSW free of any obligation to keep it confidential, or has been or is subsequently made public by the Company or a third party which had the right to do so, it shall be held in confidence by TSW, shall be used only for the purposes of performing TSW's services hereunder, and may be used for other purposes only upon such terms and conditions as may be mutually agreed upon in writing.

10. **DISCLOSURE:** Promptly upon expiration or termination of this Agreement, TSW shall make complete disclosure to the Company of all discoveries and inventions or other information within the scope of Paragraphs 8 and 9, which discoveries, inventions or other information have not been previously disclosed to the Company. In addition, TSW shall certify in writing that such disclosures are complete.

11. **INTELLECTUAL PROPERTY:** (a) All rights and licenses granted to the Company hereunder shall, to the best of TSW's knowledge, except as otherwise specifically set forth herein, be free and clear of any claim of rights by any person or entity.

12. **USE OF NAME:** TSW shall not advertise, market or otherwise make known to others any information relating to the services performed under this Agreement, including mentioning or implying the name of the Company, or any of its personnel, without prior

written consent of the Company, except as may be required for TSW to perform its duties as provided for in this Agreement.

13. **RELATIONS WITH CLIENTS AND NONCOMPETITION:** TSW acknowledges that by performing services for the Company under this Agreement, TSW shall become privy to the Company's methods of doing business, the identity of many of its customers and potential customers, and other confidential information of the Company. Therefore, during the period that TSW performs services hereunder and for four (4) years thereafter, absent the Company's prior written approval, TSW shall not provide services, either as a consultant, employee or otherwise for or on behalf of any business organization (i) engaged in direct or indirect competition with the Company, or (ii) which, at any time during TSW's business relationship with the Company, was a customer or a prospective customer of the Company, nor shall TSW engage in such activities on its own behalf. TSW certifies that it has neither developed products, nor has had access to confidential information relating to the development of products for any individual or entity engaged in direct competition with the Company.

14. **RESOURCES:** In connection with the Company's development of specifications for the Deliverables under this Agreement, TSW's technical staff will respond to the Company's telephone inquiries at ¼ hour incremental charge.

15. **NOTICES:** All payments, correspondence or notices under this Agreement shall be delivered to the parties at their respective addresses as first set forth above or as designated in writing from time to time.

16. **CONFLICT OF INTEREST:** TSW is not, and during the term of this Agreement shall not become, a party to any agreement or subject to any obligation which would impede or prohibit its proper execution and observance of this Agreement.

17. **CHANGES IN TERMS:** Any changes in the provisions of this Agreement must be mutually agreed upon, in good faith, in writing using the form set forth in Schedule B attached hereto. The cost of changes agreed upon shall be added to the payments due under this Agreement and shall be paid in accordance with payment terms of this Agreement.

18. **TERMINATION:** (a) Either party may terminate this Agreement for a violation by the other of any of the covenants contained herein by providing written notice of same to the other party. Any such notice shall state the grounds for the termination of this Agreement. Upon termination, the Company shall pay TSW any monies which are then due. The termination of this Agreement by one party shall not diminish the rights or remedies which the other party might have for wrongful breach or for any other causes.

19. **MISCELLANEOUS:** The failure of either party hereto to enforce any right under this Agreement shall not be construed to be a waiver of that right, or of damages caused thereby, or of any other rights under this Agreement. This Agreement represents the

entire Agreement between the parties and supersedes all prior agreements, arrangements and understandings relating to the subject matter. The construction, interpretation and performance of this Agreement, and the transactions under it, shall be governed by, construed, and enforced by the courts of the Commonwealth of Massachusetts, in accordance with the laws of said Commonwealth. In the event of a dispute arising from this Agreement, the parties agree to binding arbitration by the American Arbitration Association ("AAA") before a panel of three arbitrators, one each chosen by the parties, and the third chosen by the AAA. This Agreement shall take effect as an instrument under seal, shall remain in effect until termination, expiration, or cancellation by mutual agreement in writing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the day and year first written above.

The Software Works Corporation

By: *Jeanne Comen*  
Title: *President*

Print Name: *JEANNE COMEN*

Software Secure, Inc.

By: *Douglas Winger*  
Title: *President*

Print Name: *Douglas Winger*

## INVENTION, CONFIDENTIALITY AND NONCOMPETE AGREEMENT

Agreement dated as of the 14th day of November, 1999, by and between Software Secure, Inc., (the "Company") having its principal office at 57 Harvard Avenue, Brookline, MA, and Raymond Hayland ("Employee"), residing at 117 Oak Street, Wellesley, MA. In consideration of employment by the Company, Employee agrees as follows:

## 1. Definitions.

1.1 "Products" shall mean all computer programs and other products and services developed and/or licensed, sold, leased or otherwise distributed or put into use by the Company, during the term of Employee's employment.


1.2 "Confidential Information" means all valuable information of the Company, both written and oral, which may give the Company a competitive advantage and is not generally known to others. It includes, without limitation, the Inventions (as such term is defined in Section 2.1 below), customer lists and data, computer programs and documentation for such programs, information, strategies, internal reports and memoranda and other data relating to the development, manufacturing, costs, marketing, licensing, sales and uses of the Products, the source of supplies for the Products, the Company's budget and strategic plans, and the identity and special needs of customers for the Products. All Confidential Information and copies thereof are the sole property of the Company.

1.3 "Third Party Confidential Information" shall mean information or data, furnished to the Company by third parties, as to which the Company has assumed obligations of confidentiality.

1.4 "Documents" shall mean all tangible embodiments of Inventions, the Company's Confidential Information, or Third Party Confidential Information, in written or printed form, electronic storage media, or other tangible media of expression.

## 2. Assignment of Inventions.

2.1 Disclosure. Employee shall promptly and fully disclose to the Company any and all computer programs and documentation, inventions, discoveries, developments, modifications, designs, data, techniques, know-how, trade secrets, concepts, ideas or intellectual property rights, or any interest therein, whether or not patentable, or registrable under copyright, trademark or similar statutes, that are authored, conceived, developed, reduced to practice or prepared by Employee alone or by Employee and others, during the period of Employee's employment with the Company, relating to either the Products or to any prospective activities of the Company known to Employee as a

  
October 20, 1999

consequence of employment with the Company or resulting from tasks assigned to Employee by the Company (the "Inventions").

2.2 Further Assurances. Employee will, during Employee's employment and at any time thereafter, at the request and cost of the Company, promptly sign, execute, make and do all such deeds, documents, acts and things as the Company and its duly authorized agents may reasonably require to apply for, obtain and vest in the name of the Company alone (unless the Company otherwise directs) letters patent, copyrights or other analogous protection relating to Inventions in any country throughout the world and when so obtained or vested to renew and restore the same; and to defend any opposition proceedings in respect of such applications and any opposition proceedings or petitions or applications for revocation of such letters patent, copyright or other analogous protection. To the extent this provision requires Employee to take time away from work for a subsequent employer in order to appear at any proceedings described herein, Company will reasonably compensate Employee.

2.3 Works Made For Hire. Employee acknowledges that all Inventions, including without limitation all computer programs, documentation, works of authorship and copyrightable works prepared in whole or in part by Employee in the course of Employee's employment, shall be "works made for hire" under the Copyright Act of 1976 (the "Copyright Act"), and shall be the sole property of the Company and the Company shall be the sole author of such works within the meaning of the Copyright Act. All such works, as well as all copies of such works in whatever medium, shall be owned exclusively by the Company and Employee hereby expressly disclaims any and all interests in such works. If the copyright to any such work shall not be the property of the Company by operation of law, Employee hereby and without further consideration, irrevocably assigns to the Company all right, title and interest in such work, including all so-called "moral rights," and will assist the Company and its nominees in every proper way, at the Company's expense, to secure, maintain and defend for the Company's own benefit copyrights and any extensions and renewals thereof on such work, including translations thereof in any and all countries, such work to be and to remain the property of the Company whether copyrighted or not. If the foregoing moral rights cannot be so assigned under the applicable laws of the countries in which such rights exist, Employee hereby waives such moral rights.

2.4 Assignment. Without in any way limiting the foregoing, Employee hereby assigns to the Company all right, title and interest to all Inventions, including but not limited to patent rights.

2.5 Power of Attorney. In order to protect the Company's intellectual property rights, Employee designates and appoints the Company and its duly authorized officers and agents as his agent and attorney-in-fact for the limited purpose and time as described in and governed by the separate Power of Attorney provision labeled as Exhibit B.

3. Confidential Information.

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3.1 Confidentiality. Employee agrees that all Confidential Information as defined above, whether furnished to Employee by the Company or developed solely by Employee or with others and whether or not developed in whole or in part with the use of other Confidential Information disclosed to Employee by the Company, shall be the exclusive property of the Company. Employee further agrees that no Confidential Information shall be disclosed by Employee to any third party (not including another employee of the Company, unless specifically directed otherwise) during employment by the Company or after termination thereof, or used by Employee after termination of employment with the Company, except as permitted or directed by the Company's Chief Executive Officer.

3.2 Third Parties. Except as directed by Employee's supervisor, Employee shall never, directly or indirectly, use, publish, disseminate or otherwise disclose any Third Party Confidential Information.

4. Use and Return of Documents. Employee will not copy any Documents nor remove any Documents or copies thereof from the Company's premises except to the extent necessary to his employment and then only with the authorization of Employee's supervisor. Upon the termination of Employee's employment with the Company, Employee shall return immediately to the Company any and all Documents and copies thereof then in his possession or control.

#### 5. Restrictions on Competition.

5.1 Restricted Activity. During Employee's employment with the Company and for two years after termination for any reason of Employee's employment, absent the Company's prior written approval, Employee shall not provide services, including but not limited to marketing, computer programming, sales, or product promotion or development, as an employee, stockholder, partner, co-venturer, independent contractor, or otherwise, anywhere in the world, on behalf of any business organization (i) engaged in direct or indirect competition with the Company, or (ii) developing products or services competitive with those of the Company, or (iii) which, at any time during Employee's employment with the Company, was a customer of the Company, nor shall Employee engage in such activities on his/her own behalf. Employee understands that the Company shall give Employee its written approval to engage in such activities if the Company secures written assurances reasonably satisfactory to the Company from Employee and from any such prospective employer or organization for which Employee will engage in such activities that the integrity of the Confidential Information, including without limitation nonpatented Inventions, and relationships with clients, will not in any way be jeopardized by any such activities or employment.

5.2 Notice of Subsequent Employment. Employee shall, for a period of two years after the termination of employment with the Company, notify the Company of any change of address, and of any subsequent employment (stating the name and address of

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the employer and the nature of the position – unless prohibited from doing so by subsequent confidentiality agreement).

5.3 Enticement. For a period of two years after the termination of employment with the Company, Employee will not attempt to hire, or hire any employee of the Company, or assist in such hiring by anyone else, to work as an employee or independent contractor, with any business directly or indirectly competitive with the Company's business.

6. Publicity. The Company, its subsidiaries and affiliates may use Employee's name in or in connection with any technical or promotional material published by them, without further compensation to Employee.

## 7. Employment.

7.1 Employment at Will. Employee agrees that this Agreement does not create an obligation on the part of the Company to continue Employee's employment with the Company. Employee agrees that Employee's employment with the Company is "at will" and either the Company or Employee may terminate Employee's employment with the Company at any time with or without cause.

7.2 No Other Agreement. Employee warrants that Employee is not subject to any agreement or obligation with any other party which would or could in any way conflict with Employee's obligation under this agreement, except as set forth in Exhibit A.

7.3 Entire Agreement. This Agreement represents the sole agreement between the Company and Employee and there are no other agreements oral or written, related to employment with the Company or Employee's post-employment obligations to the Company. Employee agrees that any modification or waiver of this Agreement by any employee or agent of the Company will not be effective unless it is done by written amendment signed by an authorized corporate officer of the Company and Employee.

## 8. Miscellaneous.

8.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, excluding its conflicts of laws rules.

8.2 Remedies. Employee acknowledges that in the event of a breach of the provisions of Sections 2, 3, 4, or 5, the damages to the Company would be irreparable and would entail inevitable wrongful use or disclosure of the Confidential Information and/or Third Party Confidential Information. Employee therefore agrees that in addition to provable damages and reasonable attorneys' fees, the Company shall be entitled to enjoin any such breach or seek specific performance or other equitable relief in any competent court.

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8.3 Interpretation. If any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, it shall not affect any other provisions of this Agreement. If any provision in this Agreement shall be held to be excessively broad, it shall be construed by limiting it so as to be enforceable to the extent compatible with applicable law.

8.4 Assignment. This Agreement shall bind and inure to the benefit of the Company and any successor of the Company by reorganization, merger, consolidation or liquidation and any assignee of all or substantially all of its business or assets, but otherwise this Agreement may not be assigned by the Company or Employee.

8.5 Waiver of Breach. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

EXECUTED UNDER SEAL the date and year first above written.

EMPLOYEE:

Signature:

Date:

11/12/99

Print Name:

KAYMON HOLLAND

SOFTWARE SECURE, INC.

Signature:

Date:

11/12/99

Print Name:

Douglas W. King

Title

President





Software  
SECURE

August 11, 2001

CERTIFIED MAIL

Mr. Raymond Hayland  
The Software Works Corporation  
1001 Worcester Road  
Framingham, MA 01701

Dear Ray:

Pursuant to our August 11, 2001 conversation, I have enclosed herein the following:

- 1) Software Secure financial statements for 1998-June, 2001;
- 2) Subscription Agreement used during the last round of equity financing;
- 3) Notice of SSI's annual shareholder meeting; and,
- 4) Copy of the March 16, 2001 settlement offer SSI provided you.

In response to your suggestion, I would be happy to meet and discuss your concerns and questions about Software Secure.

I am also renewing my earlier request that you send me a written description of the work you are doing with the technology you described as being similar to Securexam. This would both relieve my natural concerns that Software Secure property is being used improperly, and enable me to better evaluate your suggestion that their might be synergies realized by somehow working together.

Please note that on August 1, 2001, Software Secure moved offices to the address above.

Best Regards,

Douglas M. Winneg  
President, Software Secure, Inc.

Cc: Dick Buckingham, CFO  
Enclosure

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[www.softwaresecure.com](http://www.softwaresecure.com)



**Software**  
**SECURE**

August 13, 2001

Dear Software Secure Investor:

You are invited and encouraged to attend Software Secure's 2001 Annual Stockholder Meeting on Tuesday September 18, 2001 at 12:30 pm. The meeting will be held in our new offices at 763 Massachusetts Avenue, Suite 7, Cambridge.

Please let me know if you will attend so that we can make sure there is sufficient lunch and beverages. If you are unable to attend, I will provide you with the materials distributed during the meeting.

I look forward to seeing you on September 18, 2001.

Sincerely,

Douglas M. Winneg  
President, Software Secure, Inc.

Exhibit D

763 Massachusetts Ave  
Suite 7  
Cambridge, MA 02139

tel: 617.354.7464  
fax: 617.354.7466

www.softwaresecure.com



**Software**  
SECURE

August 24, 2001

CERTIFIED MAIL

Mr. Raymond Hayland  
The Software Works Corporation  
1001 Worcester Road  
Framingham, MA 01701

Dear Ray:

I received your August 17, 2001 letter requesting that certain information supplement the packet I provided two you on August 11. I hope you find the following information responsive to your requests:

1. You have all of the Software Secure financial statements beginning in 1998. You should also have received statements reflecting the financial impact of your equity ownership as part of the Tax Form K1, provided by Software Secure's accountant.
2. The financial statements provided to you in the August 11 packet were reviewed simply for accuracy.
3. There have been no modification or amendments to the Convertible Notes issued by Software Secure in January 2000.
4. The docket number of the Software Secure patent application is S01400/70001DPM
5. The 55,000 shares reflected in the financials provided to you represent the stock that was previously offered to you as settlement to your dispute with Software Secure.
6. Your dispute with Software Secure is reflected on our books by the 55,000 shares of stock that have been offered in settlement.
7. There have been no formal disclosures to current and potential investors regarding your bill for services – as noted above, I believe that the 55,000 shares settles the issue in full.

Ray, I have enclosed herein a re-notice of our Annual Shareholder Meeting. The prior date, September 18 is the Jewish New Year holiday. Please let me know if you will be available to meet with me at the offices of Software Secure's patent counsel on either Monday, September 17, or Wednesday, September 19 so we can review the above and the patent.

Call me at your earliest convenience to confirm your availability for the September 19 meeting, and I would be happy to answer any additional questions you might have then.

Best Regards,

Douglas M. Winneg  
President, Software Secure, Inc.

Cc: Dick Buckingham, CFO  
Enclosure

**RECEIVED**  
JAN 14 2002  
OFFICE OF PETITIONS

September 14, 2001

By Fax to 617.354.7466  
& USPS

Mr. Douglas Winneg  
President  
Software Secure Inc.  
763 Massachusetts Avenue Suite 7  
Cambridge, MA 02139

Dear Mr. Winneg,

1. On advice of counsel, because of the failure of consideration, I am not bound by my non compete agreement with Software Secure Inc., nor am I obligated to perform any further services on behalf of Software Secure Inc., nor shall Software Secure Inc. affix my signature to any document until I am paid. Therefore, I will not be attending the meeting between you and Software Secure's Patent counsel on Monday, September 17 or Wednesday, September 19, 2001. You should disclose to Software Secure Inc. Patent counsel the reasons for my non attendance at this meeting.

I request that this issue be placed on the agenda of the September 25, 2001 Annual Shareholder Meeting.

2. Regarding your memo of August 24, 2001, you state (item 7) that you believe that the 55,000 shares "settles" the billing issue in full and as such no disclosures have been made to current and potential investors. My position remains unchanged from that stated in my attorney's memo of August 29, 2000 to you. I demand, as a shareholder, that you provide me with documentation of when, how and on what terms, this billing dispute with Software Secure Inc. has been settled.

I request that this issue be placed on the agenda of the September 25, 2001 Annual Shareholder Meeting.

3. Because of a prior commitment I will not be attending the September 25, 2001 Annual Shareholders Meeting. My agent will be attending in my stead, he will contact you beforehand.

If you have questions please contact Susan Reardon CPA at 617.571.6019. Respond to me in care of Susan V. Reardon, President, The Software Works Corporation, 1001 Worcester Road, third floor, Framingham, MA. 01701.

Sincerely,

  
Raymond [unclear]  
Shareholder

cc: Whittemore and Wallace  
Attorneys at Law.  
Reardon and Company, LLP  
Certified Public Accountants.

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